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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE
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10 UNITED STATES OF AMERICA,
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12 Plaintiff,
13 v.
14 DAVID D. DELAY,
15 Defendant.

Case No. CR15-175RSL

ORDER DENYING MOTION
FOR ISSUANCE OF
DOCUMENTS SUBPOENA

16 This matter comes before the Court on defendant's "Motion for Issuance of Documents
17 Subpoena." Dkt. # 504. For the reasons explained below, defendant's motion is DENIED.

18 Defendant David Delay is on trial for federal sex-trafficking and child-pornography
19 charges, the evidence of which includes emails, text messages, and other digital
20 communications. In particular, a Yahoo.com email address sent messages to an alleged victim
21 and to Delay's codefendant that appear to have been authored by H.S., a second alleged victim.
22 The government suggests Delay or his codefendant may have actually authored those messages.
23 In the motion before the Court, Delay seeks a subpoena issued to Yahoo! Inc. commanding the
24 company to "provide the IP address, content and metadata of emails, and user application
25 information" associated with the address. Dkt. # 504 at 1.

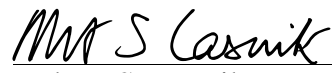
26 Issuance of subpoenas in a criminal proceeding is governed by Federal Rule of Criminal
27 Procedure 17. Rule 17(c)(1) provides for the issuance of a subpoena for production of
28 documents, but "a Rule 17(c) subpoena is not intended to serve as a discovery tool." United

1 States v. MacKey, 647 F.2d 898, 901 (9th Cir. 1981). The burden is on the party seeking
2 production to show the relevance, admissibility, and specificity of the items sought, see United
3 States v. Reed, 726 F.2d 570, 577 (9th Cir. 1984), and conclusory allegations of relevance and
4 admissibility are insufficient to meet the moving party's burden, United States v. Eden, 659 F.2d
5 1376, 1381 (9th Cir. 1981). To meet that burden, defendant must demonstrate that (1) the
6 documents sought are evidentiary and relevant; (2) the documents are not otherwise procurable
7 reasonably in advance of trial through due diligence; (3) defendant is unable to properly prepare
8 for trial without such production and inspection prior to trial and the failure to obtain such
9 inspection may tend to unreasonably delay the trial; and (4) the application is made in good faith
10 and not as a "fishing expedition." United States v. Nixon, 418 U.S. 683, 699–700 (1974).

11 Defendant has not met his burden of making a specific showing that the records in his
12 extensive request are relevant and admissible. He essentially seeks the entirety of existing
13 information about the relevant email account. He claims the records may lead to the discovery of
14 the address-holder's identity, and that they are relevant to his ability to challenge the veracity of
15 H.S.'s testimony. Dkt. # 504-1 at 2. H.S. has already testified, and defendant had ample
16 opportunity to cross-examine her. Furthermore, he makes no particularized showing of what
17 additional relevant and admissible information is likely to be produced from this subpoena.

18 For the foregoing reasons, defendant's motion is DENIED.

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20 DATED this 30th day of October, 2017.

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23 Robert S. Lasnik
24 United States District Judge
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